

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF RONALD L. EVANS, § No. 46, 2010
JR. FOR A WRIT OF MANDAMUS §

Submitted: February 16, 2010
Decided: March 30, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 30th day of March 2010, having considered the petition for a writ of mandamus filed by Ronald L. Evans, the answer and motion to dismiss filed by the State, and the Superior Court docket in the underlying criminal case, it appears to the Court that:

(1) On March 27, 2009, Evans pled guilty to several drug offenses and was sentenced.¹ Beginning April 1, 2009, Evans filed several *pro se* motions in the Superior Court.

(2) On April 1, 2009, Evans filed a motion for correction of illegal sentence. On April 7, 2009, Evans filed a motion for postconviction relief. On April 28, 2009, Evans filed a second motion for correction of illegal sentence, and on June 5, 2009, he filed a motion for modification of sentence.

¹ *State v. Evans*, Del. Super., Cr. ID No. 0808023433, Young, J. (March 27, 2009) (sentencing).

(3) By “notice of noncompliance” dated April 8, 2009, the Prothonotary returned Evans’ postconviction motion with instructions to submit the motion on the appropriate form. Evans filed the postconviction motion on April 13, 2009.

(4) By order dated April 16, 2009, the Superior Court referred the postconviction motion to a Commissioner. The Commissioner, in turn, issued a scheduling order directing that defense counsel file an affidavit by May 22, 2009, that the State file a legal memorandum by June 22, 2009, and that Evans file any reply by July 22, 2009.

(5) Evans’ defense counsel complied with the Commissioner’s scheduling order and filed the affidavit on May 22, 2009. The State did not comply with the scheduling order.

(6) On July 8, 2009, the State requested an extension of time to file the past due response that should have been filed by June 22, 2009. By order dated July 9, 2009, the Commissioner granted the State’s untimely request for an extension and directed that the State file the response on or before July 13, 2009.² The State filed the response on July 10, 2009.

(7) On July 15, 2009, Evans filed a “motion opposing the approval of [the] State’s request for the filing of [the] response out-of-time.” Evans

² The Commissioner also extended Evans’ reply deadline to August 20, 2009.

also filed a “motion for dismiss indictment” and a “motion for dismissal for failure to prosecute.” On July 21, 2009, Evans filed his reply to the State’s response.³

(8) By order dated July 23, 2009, the Superior Court denied Evans’ motion for modification of sentence and motions for correction of illegal sentence. Evans appealed that decision.

(9) Evans’ appeal divested the Superior Court of jurisdiction to decide the postconviction motion.⁴ Jurisdiction was returned on October 5, 2009, when the Superior Court received the record and mandate.

(10) On October 14, 2009, Evans filed a motion requesting an evidentiary hearing. By order dated October 15, 2009, the Commissioner denied the motion, and Evans filed a request for review. By order dated November 3, 2009, the Superior Court denied the request for review.

(11) On November 3, 2009, Evans filed a motion to expand the record. By order dated November 5, 2009, the Commissioner denied the motion. In the same order, the Commissioner advised the parties that the briefing on the postconviction motion was complete.

³ Evans filed a response to defense counsel’s affidavit on June 16, 2009.

⁴ *Eller v. State*, 531 A.2d 948, 951 (Del. 1987). The Superior Court advised the parties as much in an order dated August 25, 2009, deferring action on the postconviction motion until the record and mandate were returned.

(12) On November 9, 2009, Evans filed a “motion for review of the following contentions in support of the defendant’s motion for postconviction relief.” On December 4, 2009, he filed a “motion for immediate dismissal of indictment.”

(13) It is against this backdrop that the Court considers Evans’ petition for a writ of mandamus filed on January 29, 2010. In the petition, Evans complains that the Superior Court has not ruled on his motion for postconviction relief and related motions.

(14) A writ of mandamus is designed to compel relief when the trial court has manifested an arbitrary failure or refusal to perform a nondiscretionary duty and no other remedy is available at law.⁵ This Court will not issue a writ of mandamus “to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket.”⁶

(15) In its answer and motion to dismiss, the State contends that Evans has not demonstrated that the Superior Court has arbitrarily failed or refused to act on the postconviction motion and related motions. We agree with the State’s position. The passage of eighty-five days, *i.e.*, from the November 5, 2009 submission date of the postconviction motion until the

⁵ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

⁶ *Id.*

filing of the mandamus petition on January 29, 2010, does not constitute an arbitrary failure or refusal to act on the part of the Superior Court.⁷

NOW, THEREFORE, IT IS ORDERED that Evans' petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁷ Under the circumstances of this case, the Commissioner's November 5, 2009 submission date is reasonable.